Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

GLENN DAVIS, *(pro se)*

Petitioner

CITY OF TUCSON,

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Glenn Davis, Plaintiff *(pro se)*
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QUESTIONS PRESENTED

1. Whether, (the evidence and controlling law of), State Courts or Federal Courts determine the legalities, violations and that procedural requirements are met, concerning contractual rights, (of a "*city*" municipal government permanent employee who has passed probation), when a notice of intent to terminate, employees response to that notice and than termination of an employee, only for "just cause".

2. Whether a decision by the U.S. District Court of Arizona denying / not considering a motion for a new trial of its June 4, 2001 judgment under FRCP 60(b)(6), results in a manifest injustice, because of an intervening administrative decision along with a municipal hearing, governed by state law and than a subsequent state appellant court decision in which the evidence and controlling law was substantially different, the law has changed, the decision was clearly erroneous or work a manifest injustice.

3. Whether affirmation (summarily) by the U.S. Court of Appeals For The Ninth Circuit, which also denied / did not consider "petition requesting the Ninth Circuit to set aside the June 13, 2002 memorandum" of the same D. C. judgment, results in a manifest injustice, because of an intervening administrative decision along with a municipal hearing, governed by state law and than a subsequent state appellant court decision in which the evidence and controlling law was substantially different, the law has changed, the decision was clearly erroneous or work a manifest injustice.

RULES 14.1(b) AND 29.6 STATEMENT

Petitioner, Glenn Davis, (Pro Se)

Respondent, City of Tucson

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PETITION FOR A WRIT OF CERTIORARI

Glenn Davis respectfully petitions this Court for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit (App., infra, 1-3) from which review is sought is unreported.

The opinion of the District Court (App., infra, 4-8) is unreported.

The opinion of the Court of Appeals State of Arizona (App., infra, 9-27) is unreported.

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit was entered on July 14, 2005.

The jurisdiction of this court is invoked under 28 U.S.C. §1254. Jurisdiction in the District Court was based on 28 U.S.C. §1331. Jurisdiction before the Ninth Circuit was based on 28 U.S.C. §1291.

STATEMENT OF THE CASE

This matter was originally filed in 2000, and final summary judgment was granted to the Defendant on June 4, 2001. App., infra, 32 -38 .

There was an intervening administrative decision along with a municipal hearing, governed by state law (by the employer infra, 24 – 29 and than 30-31,) and than a subsequent state appellant court decision (App., infra, 9- 23.) in which the

evidence and controlling law was substantially different, the law has changed(App., infra. 14- 23. esp. par. 5-10), the decision worked a manifest injustice.

(federal case law) Plaintiff is an African-American male. Mr. Davis was employed by the City's solid waste disposal department. Because of a chronic back injury he became disabled. As an accommodation for his disability the City transferred Mr. Davis to a position as a customer service clerk in the Streets and Traffic division, subject to a six-month probationary period. Mr. Davis was the only male employee in the position. At the end of the six months *he* was transferred to Parks and Recreation as a recreation assistant. He was again placed on six months probation, which he completed satisfactorily. App., infra. 25, paragraph 5. Plaintiff requested and was granted leave under the Family and Medical Leave Act ("FMLA") in May 1999. In August 1999 he was placed on medical leave without pay. App., infra. 4.

(intervening state and municipal case law) As of May 2000, Davis had not yet returned to work and thus had been absent from his employment for one year. On June 13, the city notified Davis that City Administrative Directive 2.01-7 mandated that medical leaves may not be granted for periods longer than one year (notice which was in error and fail to invoke Tucson Code § 10-12 (8), which was not a part of the pertinent hearing record and failed to define 10-10 (8)). App., infra. 24-29 and 47, last paragraph foot notes. When Davis failed to return to work by that date or otherwise provide the city with information as to when he would be returning, the city notified him on July 3 that his employment was terminated, effective August 21. App., infra. 13. Prior to his termination, Davis submitted his June 27, 2000 request for "reasonable accommodation under the ADA for light duty is contained in the record." The city failed to reasonably accommodate him under the ADA and under Administrative Directive 2.05-2 .App., infra. 22-23.

(federal case law along with supplemental jurisdiction, state case law claims) Plaintiff filed this suit on January 14, 2000. He made ten claims for relief: (1) intentional discrimination in violation of Title VII; (2) hostile work environment; (3) illegal retaliation in response to a previous ACRD complaint; (4) violation of the Americans with Disabilities Act ("ADA"); (5) violation of equal protection because of discrimination based on race, sex and disability; (6) violation of due process as a result of being denied his union grievance rights when transferred to a non-union job; (7) constructive discharge; (8) intentional infliction of emotional distress; (9) wrongful termination in violation of public policy; and (10) breach of the implied covenant of good faith and fair dealing. This Court granted summary judgment for the Defendant on all the claims except Claim 6, which it allowed further briefing on. After briefing the Court, summary judgment was also granted on this Claim in favor of the Defendant. App., infra, 13.

Plaintiff appealed to the Ninth Circuit Court of Appeals which denied his appeal and his request for en banc rehearing on September 11, 2002. Plaintiff also filed suit in the state superior and appeals courts, Davis v. Civil Serv. Comm 'n, No. 2CA-CV 2003-0081 (Ariz.App., Jan. 22, 2004), note that the Arizona Appeals Court refers to the Ninth Circuit memorandum and . App., infra, 21.

Plaintiff requested a new trial in this district court, pursuant to not only Rule 60(b)(1), but, factually to Rule 60(b)(1), (2), (3), (6). Compare App., infra, 41 to App., infra, 6.

Additionally, Plaintiff requested reconsideration and re-examination of state law of the District Court's prior decision and review of the Arizona Court of Appeals and the Ninth Circuit Court of Appeals decision, or his claims "as they relate to this Court's granting Defendants motion for summary judgment and supplemental jurisdiction." on the basis of violation of right of substantive due process under the

Fourteenth Amendment and violation of procedural due process. App., infra. 5 and 7.

Finally, the Ninth Circuit Court of Appeals decided to summarily affirmed the district court's judgment. - Appellant's "motion to stay the proceedings of the motions panel pending the decision of the petition requesting the Ninth Circuit to set aside the June 13, 2002 memorandum in no. 01-17102" was denied as unnecessary. All other pending motions and requests, including appellant's motion for appointment of counsel, were denied. App., infra. 1-3.

REASONS FOR GRANTING THE PETITION

State Courts determine the legalities, violations and that procedural requirements are met, concerning contractual rights, (of a "*city*" municipal government permanent employee who has passed probation), when a notice of intent to terminate, employees response to that notice and than termination of an employee, only for "just cause".

The procedural due process protections of the Fourteenth Amendment apply to deprivations of property interests. The existence and breadth of these property interests "are defined by existing rules or understandings that stem from an independent source such as state law." Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Thus, the Court must look to state and municipal law to determine whether Plaintiff had a property interest in his position as a recreation assistant and could not be terminated without cause. This situation can be usefully compared to that in McGraw v. City of Huntington Beach, 882 F.2d 384 (9th Cir. 1989). In McGraw, the plaintiff had completed a probationary period in her original job and had become a "permanent" employee with property rights for procedural due process purposes.. Under Tucson's civil service rules. The Commission's role in cases such as this is to

determine whether "just cause" supports termination of the City employee

When Davis notifed the department about the conditions necessary to return to work by that date or otherwise provide the city with information as to when he would be returning. the city notified him on July 3 that his employment was terminated. effective August 21. App.. infra. 13. Prior to his termination. Davis submitted his June 27. 2000 request for "reasonable accommodation

The notice of intent to Terminate (notice which was in error and fail to invoke Tucson Code § 10-12 (8). which was not a part of the pertinent hearing record and failed to define 10-10 (8)) which could not have constituted just cause along with City Administrative Directive 2.01-7. App.. infra. 16-18. 25-28.44and47.

The Court of Appeals found that the lower court should remanded the case back to the Commission due to the Commission's failure to follow procedural requirements. primarily the sufficiency of the hearing notice. *Civil Service Comm'n v. mills*. App. 499. 534. P.2d 420 (1975)

State Courts determine the legalities. violations and that procedural requirements are met. concerning contractual rights. for "just cause".

Therefore. Plaintiff's requested relief for reconsideration and re-examination of state law of the District Court's prior decision and review of the Arizona Court of Appeals and the Ninth Circuit Court of Appeals decision. or his claims "as they relate to this Court's granting Defendants motion for summary judgment and supplemental jurisdiction." on the basis of violation of right of substantive due process under the Fourteenth Amendment and violation of procedural due process should have been granted incuding a new trial.

The decision by the U.S. District Court of Arizona denying / not considering a motion for a new trial of its June 4, 2001 judgment under FRCP 60(b)(6), results in a manifest injustice,

because the record presented is clearly a demonstration of actual injury and the presence of circumstances beyond the movant's control that prevented timely'dction to protect the movant's interests work a manifest injustice and relief should have been granted for a new trial.

Motions for relief from judgment under Fed. R. Civ. P. 60(b)(6) (in the interests of justice) must be brought within a reasonable time after the judgment was entered *(see* In re GAD. Inc., 340 F.3d at 334), and therefore Plaintiffs motion is untimely; Further, relief under Rule 60(b)(6) is reserved for "extraordinary circumstances" *(see* Lehman v. United States, 154 F.3d 1010, 1017 (9th Cir. 1998) (relief under Rule 60(b)(6) should be granted "sparingly"), *cert. denied, 526 U.S.* 1040 (1999)): Finally, relief under Rule 60(b)(6) requires a demonstration of actual injury and the presence of circumstances beyond the movant's control that prevented timely'dction to protect the movant's interests (see Lehman, 154 F.3d 1010, 1017).

Affirmation (summarily) by the U.S. Court of Appeals For The Ninth Circuit, which also denied / did not consider "petition requesting the Ninth Circuit to set aside the June 13, 2002 memorandum" of the same D. C. judgment, results in a manifest injustice

A Ninth Circuit panel may reconsider an earlier ruling if the evidence on a subsequent trial was substantially different, the law has changed, or the decision was clearly erroneous or would work a manifest injustice: *see Richardson v. United States,* 841 F.2d 993, 996 (9th Cir.)

In a case governed by state law, the District Court must reexamine the controlling (state) law in the light of an intervening state court decision which specifically casts doubt on Ninth Circuit's ruling), amended, 860 F.2d *357* (9th Cir. 1988). *See United States v. Houser* **CONCLUSION**

For all the forgoing reasons stated above, GLENN DAVIS Petitioner, respectfully request that this Court grant this petition for a **Writ Of Certiorari**

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GLENN DAVIS.	)	No. 05-15022
Plaintiff - Appellant.	)	D. C. No. CV-00-00032-WDB
v.	)	
CITY OF TUCSON.	)	JUDGMENT
Defendant - Appellee.	)	

Appeal from the United States District Court for the District of Arizona (Tucson).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Tucson) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is

AFFIRMED.

Filed and entered 07/14/05